

**TOWN OF OLD LYME**  
**BOARD OF SELECTMEN**  
**SPECIAL MEETING Minutes**  
13 July 2015

The Board of Selectmen held a Special Meeting at 5pm on 13 July 2015 in the Meeting Hall of the Old Lyme Memorial Town Hall. First Selectwoman Bonnie Reemsnyder, Selectwoman Mary Jo Nosal and Selectman Skip Sibley were present.

1. **Approval of Minutes:** 15 June 2015

Selectman Sibley requested the following addition to the minutes of 15 June 2015 under **New Business**

**c) Bus Request from Lenny's on the Beach:**

*Selectman Sibley would like the minutes to reflect that he asked specifically if local constables had been consulted and First Selectwoman Reemsnyder said no.*

A motion was made by Selectman Sibley, seconded by Selectwoman Nosal to approve the minutes with changes noted. Motion passed.

2. **Communication:** None

3. **Appointments:** None

First Selectwoman Reemsnyder requested a motion to move up item *5A WPCA Ordinance: Discussion of member removal process w/Town Attorney* in the agenda order. Motion to move made by Selectwoman Nosal, seconded by Selectman Sibley. Motion passed.

**New Business:**

*a. WPCA Ordinance: Discussion of member removal process w/Town Attorney*

First Selectwoman presented an overview of the issue. The WPCA is over budget for a wastewater study. A request for additional funding to finalize the wastewater study was denied at the May 18 Town Meeting. The Town is under Administrative Order from the State of Connecticut DEEP to complete the study, and the Board of Selectmen, Board of Finance, and WPCA have been trying to decide how to move forward. The Board of Finance has requested that the Board of Selectmen look into the possibility of removing a WPCA member.

She noted that the WPCA Ordinance was updated three years ago. Section 16-13 was added to deal with vacancies and removal to make the ordinance consistent with State Statutes. The Ordinance states any member may be removed by the Board of Selectmen for cause after a noticed hearing.

First Selectwoman Reemsnyder and Town Attorney Marilyn Clarke have been discussing the Board of Finance request and the Town Ordinance.

First Selectwoman Reemsnyder asked Attorney Marilyn Clarke what might constitute "for cause."

Attorney Clarke said this is the most difficult question and is what a judge would see or what a reasonable person would consider as cause: illness, moving away, an ethics decision.

The First Selectwoman asked if removal of a member for cause after a noticed hearing would be done in Executive Session.

Attorney Clarke said, under FOI, the issue could be considered in Executive Session unless the person requested a public forum.

The First Selectwoman asked if there are other steps that might be taken prior to scheduling a hearing. Is this a consideration for the Ethics Commission?

Attorney Clarke said the Ethics Commission's process is private. It is up to the Selectmen to decide if they want to make a recommendation to the Ethics Commission.

The First Selectwoman asked about the potential for lawsuits, citing the potential impact of an action on a person's reputation. Would the person considered for removal have the right to have an attorney present? Would the hearing notice have to be a "Legal Notice?"

Attorney Clarke said the general procedure for such a meeting is spelled out in the State Statutes, including requirements for notice and right of representation.

Selectman Sibley reiterated that the Board of Finance has asked the Board of Selectmen to look into the removal process. He further stated the Board of Finance has authorized \$19,900 to hire an independent consultant to research what has occurred. He said both Boards take the matter very seriously and want to determine who is responsible for the budget over expenditure. Selectman Sibley asked Attorney Clarke if she recommends that the Board of Selectmen wait for the independent report from the Board of Finance before proceeding.

Attorney Clarke said she has a problem with the Board of Finance dictating to the Board of Selectmen. She believes the Board of Finance has exceeded their bounds and does not believe it is within their authority. If she were on the Board of Selectmen, she would not wait for the Board of Finance.

Selectwoman Nosal asked if negligence would be considered cause.

Attorney Clarke said she does not believe the situation falls into that category at all.

Selectwoman Nosal asked if there would be liability if the Board of Selectmen made a recommendation to a member to step down.

Attorney Clarke did not want to answer off the cuff, but will respond to the question later.

Selectwoman Nosal asked if a board chairman is considered a town officer and if this situation has happened before.

Attorney Clarke said she believes a board chair is a town official, and she does not recall this situation happening previously.

The First Selectwoman has discussed with the Town Attorney that this is not malfeasance or wrongdoing. She is looking for guidance from the Town Attorney on the most prudent way of moving forward. She wants to be overly cautious before proceeding.

Attorney Clarke said this is a situation where budget funds have been over expended. People are working hard; she cannot imagine someone being removed for this reason.

Selectwoman Nosal expressed concern over setting a precedent, saying she has heard from WPCA members and other volunteers questioning why they would be willing to serve on a board or commission if this is what happens.

The First Selectwoman suggested the Board absorb the information and consider the matter at a future meeting.

#### **4. Old Business:**

##### ***a. Boathouse Hains Park Improvements Update***

Selectman Sibley said the project architect was not in attendance at the most recent meeting on the Boathouse project. The Committee has narrowed the plan to two options. Both entail keeping the existing restroom location at Hains Park. The question is whether the Boathouse/storage building can accommodate flex space for a videotape room and locker storage. Both Building Official John Flower and Committee co-chair Paul Gianquinto have confirmed with the State that modifications to the original plan will be acceptable as long as the restroom facility is within 500 feet of the Boathouse. Selectman Sibley confirmed that this is the case.

The next meeting is scheduled for July 23 at 7:30pm. Sketches of both options are being developed for use by an estimator who will help the Committee determine if one option would be significantly lower in cost than the other.

First Selectwoman Reemsnyder said she is pleased with the revised concept, and believes the new design will benefit the whole community. She will follow up with committee co-chairs and make sure David Stygar is updated on the project per STEAP grant requirements. She believes another update is due in October.

Selectman Sibley is pleased with the collaboration on the project from District 18, Parks & Recreation, and the Building Department. He suggested the project could move forward this fall using STEAP funds for the Boathouse. The restroom facility could move forward in the spring using Town funds. Splitting the project could lead to a cost savings because prevailing wage requirements will only pertain to the STEAP funded portion of the project. He likened it to the Town Woods Park project.

##### ***b. Rte. 156 Bikeway/Sound View Improvements: Update on Public Info Mtg.***

First Selectwoman said a Public Information Meeting on June 30 was attended by 55+ people. BSC's presentation articulated what the Town is trying to do. The project was intended to construct a Bikeway along Route 156 and along Hartford Avenue to a new greenway with restroom facilities. When project estimates came in higher than anticipated, the Committee decided to undertake the project in phases, with the first phase being the Bikeway, using funding available through the DOT Grant.

Comments at the Public Information meeting expressed disappointment that the restrooms would not be included in the first phase. Concerns were also expressed over reduced parking and the possibility that a future sewer project could impact new sidewalks. Persons have 14 days following the Meeting to submit comments on the project, which will be reviewed by the Bikeway Committee and presented to the Selectmen.

Overall, comments to the Board of Selectmen have been largely favorable, and DOT liaison David Head has reported favorably to the State on the Public Information Meeting. The First Selectwoman commented that it is wonderful that a grant will pay up to 80% on the project.

Selectwoman Nosal said the Bikeway Committee met on July 7 and discussed comments received to date to ascertain that issues raised had been addressed by the committee. The Committee voted to ask the Board of Selectmen to move forward with the project.

The next Committee meeting is scheduled for July 20 at 4:30pm.

*c. Rogers Lake Treatment Application Update*

Feedback from the NDDDB (Natural Diversity Database) has been received by the State DEEP.

New England Environmental (NEE), consultants charged with developing a lake management plan, advised the Selectmen that the feedback was required before they could submit an application to the DEEP for herbicide application.

The NDDDB reported there are two possible fish species of special concern in proposed treatment areas, as well as possible fresh water mussels.

NEE project manager Scott Fisher reviewed options with First Selectwoman Reemsnyder and First Selectman Eno of Lyme. It may be necessary to conduct a survey to verify the NDDDB report at an estimated cost of \$9,000. Mr. Fisher advised that NEE expects to come in under its budget by \$9,340. The project cannot proceed without addressing the NDDDB concerns and he will confirm what the DEEP requires.

First Selectwoman Reemsnyder said it is clear there can be no treatment this summer. Options include asking the Board of Finance for use of the NEE surplus to fund the survey, and planning for treatment in June of 2016. Additional potential costs could include additional surveys or relocation of a species from a treatment area. She said the issue does not only impact herbicide treatment, as hydro-raking would also impact any mussels in the treatment area. She said First Selectman Eno would like to continue moving forward.

Selectman Sibley expressed disappointment that the Board of Selectmen had not learned from its consultants earlier of possible setbacks based on an NDDDB report. He urged consideration of a Plan B and referred to information about an alternative technology for weed treatment that he had given to the First Selectwoman. He noted that the Conservation Commission's opposition to herbicides had prompted him to seek alternatives.

First Selectwoman Reemsnyder said she had just received a lengthy opinion on the alternative technology from the NEE consultants. She will share the email she received, which cited the prohibitive cost of the infrastructure which would be needed for the alternative. She added her impression that surveys commonly counter information from the NDDDB which may rely on outdated or anecdotal material for its report(s). She will update the Rogers Lake Authority on the status of the project.

**5. New Business:**

- a. *WPCA Ordinance: Discussion of member removal process w/Town Attorney* (moved up in the Agenda)

*b. July 4<sup>th</sup> Weekend Update*

First Selectwoman Reemsnyder included this topic because of concerns expressed at earlier meetings about preparedness. She and TFC Inglis met with some of the beach associations before the 4<sup>th</sup>, and she received positive feedback from Point 'O Woods and Miami Beach Associations. She noted that when Rocky Neck

State Park closes, as it has for the past two weekends, Soundview is seriously impacted. A recent storm created problems with washed away swim lines and excessive seaweed on the beaches. Harry Plaut reported to her that he was busy handling those problems.

She has met with the Resident State Trooper (TFC Inglis) who suggested the use of sandwich boards at Portland, Hartford and Swan when the parking lots are at capacity. Tickets were issued for illegal parking lots over July 4<sup>th</sup> and she anticipates receiving hearing requests.

Selectwoman Nosal read aloud a letter in which she commended the work of Public Safety officials over the July 4<sup>th</sup> weekend. She suggests scheduling a meeting with Public Safety officers and residents to discuss ongoing public safety efforts.

Selectman Sibley said he was out of town over the 4<sup>th</sup>, but offered observations on his visit to Soundview on Sunday afternoon. The Church Parking lot was chained off, most private lots appeared to be in compliance, and there were 12 to 13 cars in the lot adjacent to the Police Station used for towed vehicles. He saw several Rangers congregating by the flagpole while soccer games were underway on the beach and people were obviously drinking on the beach. When he left at 5:30, he saw Jim Graybill from All Pro Automotive having to deal with irate people at the Tow Lot. He believes we need a protocol if we're going to tow, and thinks a Police Officer should be present at the Tow Lot. He would like to see the Rangers interacting more with the public. He asked the First Selectwoman to report his comments to the Resident State Trooper. Selectman Sibley also expressed concern about jet ski traffic at the beachfront.

First Selectwoman Reemsnyder responded that Rangers now have whistles and the Police Boat has gone on patrol, but the marine traffic is impossible to enforce from the shore. There are limited state and local resources available. She agrees that more enforcement is needed on the water.

Selectwoman Nosal also visited Soundview on Sunday but did not witness the same issues reported by Selectman Sibley. She observed a strong police presence, and believes the issue may be timing. Selectman Sibley offered to share photos of what he witnessed. He said his comments were meant to be constructive.

The First Selectwoman confirmed that all comments will be shared and she will continue to work toward improving conditions at Soundview. She noted that she receives conflicting reports from residents and believes circumstances may vary depending on the time of day.

## **6. Public Comment:**

Rich Prendergast, 16 New Britain Road, Vice Chairman of WPCA, commented that the Rogers Lake Weed project and WPCA issue seem to have similarities. Both face unanticipated costs due to DEEP requirements. He hopes that extenuating circumstances of over expenditures due to mandated DEEP requirements are explained to whoever is researching item 5a. He said it doesn't seem right to remove a member because you disagree with the way something is done and thinks there will be short term and long term consequences if the Board decides to remove a commission member.

Andrew Lord, Attorney for WPCA, said he understands there has been considerable consternation over funding needed to comply with requests from the DEEP for additional information on a Clean Water Funds grant wastewater project. He recently saw DEEP official Denise Ruzicka, who volunteered that the WPCA had done nothing wrong, and offered to address Town boards on the issue.

John McCutcheon? Portland Avenue, is concerned about emergency access to Soundview streets when cars line up for spaces in private parking lots. He asks that Police check on the private lots and advise them against tying up traffic. He also agrees with Selectman Sibley that Rangers are not addressing drinking on the beach. He thinks private parking lot operators should be required to enforce cooler restrictions.

Dimitri Tolchinski, former Chair of the WPCA and 17 year member of WPCA, said if there is a problem with a WPCA decision, the responsibility is shared by all members and the First Selectwoman, who was in attendance at the meetings. He questioned if the Town's agreement with its engineers specifies responding to the DEEP, and said all are working to benefit the Town.

Kurt Zemba, 59-3 Rowland Rd, Chair of the WPCA, said there is clearly a lack of communication between the Boards of Finance and Selectmen and the WPCA. The WPCA plans to take extraordinary steps to make sure everyone understands what is happening. He thinks it is important for the Board of Selectmen to take responsibility and for people to stop looking for blame. Wastewater management is a contentious issue but there is a time and a place to state disagreements. He said the Town agreed to undertake a Clean Water Funds study and to play by their rules, and now we have an order from the State. It is important for Town leadership to stand together and talk about how we can work together on the real issue facing us.

Doug Wilkinson, Haywagon Drive, WPCA member, said he commends the Board of Selectmen for taking a measured approach to the removal of a member issue. He asked what the Board of Finance's reason was for asking the Selectmen to look into removing a member. He also asked if Attorney Clarke's opinion was a personal opinion or a legal one.

#### **7. Other Business:**

Selectman Sibley said the Board of Selectmen has not yet discussed the administrative order received from the DEEP. He understands the Town has 60 days to respond and asked that the matter be included on Board of Selectmen agendas going forward.

First Selectwoman Reemsnyder said she has reach out to legal counsel regarding the DEEP order. She understands that the order is for the Town to complete a wastewater plan; it is not an order to implement the plan. The Board of Selectmen needs to understand their various options regarding the order.

#### **8. Executive Session: None**

#### **9. Adjournment:**

Motion to adjourn made by Selectman Sibley at 6:57pm, seconded by Selectwoman Mary Jo Nosal.

Catherine Frank  
7/15/15

**Attachment (Letter read aloud by Selectwoman Mary Jo Nosal)**

July 4, 2015

Dear First Selectwoman Reemsnyder,

I observed the work of Officer Collins, Trooper Inglis and The Rangers at Sound View on the busy July 3 holiday and I commend them. My acknowledgement includes, meeting with the Rangers at the start of the day, managing the traffic near the lot, ticketing appropriately, requesting that the Troop inform the public that the area was over capacity, placing patrol cars at Hartford and Swan just long enough to settle the blocks long traffic jam on Hartford Avenue, dealing with many new visitors unfamiliar with Sound View, patrolling the beach, cording off the bottom of Portland for parking, parking patrol cars strategically in the area, and for planning for back-up support from the Troop.

I also wish to commend Officer Heinszen whom I observed working with the Rangers on July 2 to prepare for expected traffic and nuisances. The planning was extremely important and I thank him for the foresight.

I also received acknowledgement from a few residents on July 3rd who took the time to show appreciation for the apparent efforts.

Please share this with any public safety representative who aided in this effort because I thank them, too.

With Sincere Appreciation,

Mary Jo Nosal  
Selectwoman, Old Lyme